

# **EXHIBIT 34**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**  
Richmond Division

ePLUS INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:09CV620 (REP)
	)	
LAWSON SOFTWARE, INC.,	)	
	)	
	)	
Defendant.	)	

**DEFENDANT LAWSON SOFTWARE, INC.’S MEMORANDUM IN OPPOSITION  
OF MOTION IN LIMINE NO. 2 TO EXCLUDE ANY EVIDENCE, EXPERT OPINION,  
OTHER TESTIMONY, OR ARGUMENT PERTAINING TO ALLEGED PRIOR ART  
AND INVALIDITY THEORIES NOT SET FORTH IN DEFENDANT’S COURT-  
ORDERED SECOND SUPPLEMENTAL STATEMENT**

Defendant Lawson Software, Inc. (“Lawson”) respectfully opposes Plaintiff ePlus, Inc.’s (“ePlus”) motion in limine to exclude any evidence, expert opinion, other testimony, or argument pertaining to alleged prior art and invalidity theories. The Court has specifically allowed the use of the legacy systems as prior art to prove invalidity. Their relevance has only increased in view of ePlus’s infringement contentions that were raised for the first time in its expert report on infringement. Moreover, Lawson’s legacy systems, including versions 5.0 and 6.0 referenced in ePlus’s motion, are relevant to issues other than invalidity. Those legacy systems, which ePlus does not contend infringe, are relevant on the issues of damages, lack of specific intent to induce infringement, and lack of willful infringement. They are also relevant to infringement, at least because Lawson should be entitled to use the systems to rebut and discredit ePlus’s infringement and damages contentions which inexplicably indicate that post-2002 Lawson infringe, but pre-2002 systems do not.

## **I. BACKGROUND**

### **A. The May 25, 2010 Order Does Not Preclude Admission of the Lawson Legacy Systems or the J-Con and Gateway Documents, and To the Extent it Was Granted, Was Limited to Admissibility for Purposes of Invalidity Only**

At the time Lawson supplemented its invalidity contentions, Lawson made it clear to ePlus that it intended to rely on the legacy systems with respect to issues other than invalidity. In early April, 2010, Lawson informed ePlus that its legacy systems were relevant beyond the issue of invalidity. (Exh. 1.) On April 29, 2010, Lawson, in a letter to the Court, detailed that the systems were relevant at least on the issues of damages, lack of intent to infringe, lack of willfulness, alternative and non-infringing technology, and background of the art. (Exh. 2.) On May 7, 2010, Lawson again set forth the following grounds on which the systems were probative:

- A. providing background on Lawson's current software
- B. damages
- C. lack of intent to infringe / lack of willfulness
- D. obviousness (the scope and content of the prior art)
- E. alternative and non-infringing technology
- F. rebuttal to ePlus's infringement and damages contentions and expert reports

(Exh. 3.) On May 21, 2010, Lawson again reiterated the relevance of the systems for matters beyond invalidity. (Exh. 4.)

This history was referenced at the May 24, 2010, hearing regarding the motion to strike portions of the Shamos report, wherein the Court confirmed that the motion was limited to the issue of admissibility for the purpose of invalidity, and not for any other purpose:

LAWSON SOFTWARE, INC.

By /s/  
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**CERTIFICATE OF SERVICE**

I certify that on this 2nd day of July, 2010, a true copy of the foregoing will be filed electronically with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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